



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE
SECRETARY

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DOVER, DELAWARE 19901

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Secretary's Order No.: 2015-WH-0039

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1301:
*Delaware Regulations Governing Solid Waste***

Date of Issuance: October 15, 2015

Effective Date of the Amendment: November 21, 2015

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6006, 6010, and 7 *Del.C.* §§6301 *et seq.*, and any other relevant authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 DE Admin. Code 1301, *Delaware Regulations Governing Solid Waste* ("DRGSW"). The Department's Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section ("SHWMS"), has conducted this regulatory development process consistent with the requirements of 29 *Del.C.* Chapter 101, and has commenced said process with Start Action Notice 2014-11 dated December 11, 2014.

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The Department published its initial proposed regulation Amendments in the February 1, 2015 *Delaware Register of Regulations*. The Department then held a public hearing on February 26, 2015. Consistent with 29 *Del.C.* §10118(a), the public hearing record remained open for public comment through March 13, 2015.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to existing DRGSW to enable the Department to provide greater environmental protection and to reduce human health risks. The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on February 26, 2015, at which time the SHWMS provided an exhaustive review of the proposed regulation Amendments, addressing (1) the Department's reasoning for promulgation of these proposed Amendments; (2) the persons affected by these proposed Amendments; and (3) the particulars of the proposed Amendments, including a thorough discussion of all definitions and processes set forth therein. Members of the public attended the hearing on February 26, 2015, and comment was received by the Department with regard to this proposed regulatory promulgation. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing on February 26, 2015, the Department fully responded to each individual comment received from the public with regard to this proposed regulatory promulgation. The Department's presiding hearing officer, Lisa A. Vest, then prepared a Hearing Officer's Report dated October 2, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process,

establishes the record, and recommends the adoption of the proposed regulatory Amendments as attached to the Report as Appendix “A”.

Reasons and Conclusions

Based on the record developed by the Department’s experts and established by the Hearing Officer’s Report, I find that the proposed regulatory Amendments to 7 DE Admin. Code 1301: *Delaware Regulations Governing Solid Waste* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department’s experts in the Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section, fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to (1) provide greater environmental protection and reduce human health risks; (2) increase enforceability and oversight available to the Department; (3) to ease the regulatory burden for small businesses generating only a small amount of infectious waste by modification of the existing infectious waste regulations with regard to allowing sharps to be transported without a transporter permit if certain conditions are met; and (4) provide greater consistency and fairness, as well as additional clarity (due to the correction of current clerical error) to the regulated community.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 DE Admin. Code 1301, pursuant to 7 *Del. C.*, Chapters 60 and 63;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.*, Chapter 60, to issue an Order adopting these proposed regulatory Amendments as final;

3. The Department provided adequate public notice of the proposed regulatory Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory Amendments, including at the time of the public hearing held on February 26, 2015, and held the record open through close of business on March 13, 2015, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory Amendments before making any final decision;

4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;

5. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code 1301: *Delaware Regulations Governing Solid Waste*, will enable the Department's SHWMS to (1) provide greater environmental protection and reduce human health risks; (2) increase enforceability and oversight available to the Department; (3) to ease the regulatory burden for small businesses generating only a small amount of infectious waste by modification of the existing infectious waste regulations with regard to allowing sharps to be transported without a transporter permit if certain conditions are met; and (4) provide greater consistency and fairness, as well as additional clarity (due to the correction of current clerical error) to the regulated community;

6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed regulatory Amendments, as published in the February 1, 2015 *Delaware Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect twenty days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 DE Admin. Code 1301: *Delaware Regulations Governing Solid Waste*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



David S. Small
Secretary

MEMORANDUM

TO: The Honorable David S. Small
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Lisa A. Vest 
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: **Proposed Regulation Amendments to 7 DE Admin. Code 1301:**
Delaware Regulations Governing Solid Waste

DATE: October 2, 2015

I. Background:

A public hearing was held on Thursday, February 26, 2015, at 6:00 p.m. at the Department of Natural Resources and Environmental Control (“DNREC”, “Department”), 89 Kings Highway, Dover, Delaware to receive comment on proposed amendments (“Amendments”) to 7 DE Admin. Code 1301: *Delaware Regulations Governing Solid Waste* (hereinafter referred to as “DRGSW”). To provide greater environmental protection and to reduce human health risks, the Department’s Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section (“SHWMS”) is proposing several modifications to the existing DRGSW, as follows, to wit:

1. Modification of the existing solid waste transporter exemptions, and removal of the obsolete dry waste transporter section, as dry waste transporters are no longer treated any differently than other solid waste transporters;
2. Replacement of the term “approval” with “permit” in the composting and recycling section to increase enforceability and oversight available to the Department, and to provide greater consistency and fairness;

3. Deletion of the existing provision allowing facilities solely accepting source separated materials to not be considered a transfer station, as there is no legitimate reason to treat facilities accepting source separated vs. non-source separated materials differently;
4. Modification of the existing provision addressing approval or denial of a permit to add additional guidance as to when a permit can be modified, denied, terminated, or revoked for greater transparency and fair application;
5. Modification to the existing infectious waste regulations allowing sharps to be transported without a transporter permit if certain conditions are met, in order to ease the regulatory burden for small businesses generating only a small amount of infectious waste; and
6. Addition of a definition for “non-commercial capacity” to promote further clarity to the regulated community, as well as correction of a clerical error in the name of the Section of the existing DRGSW.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1301, pursuant to 7 *Del. C.*, Chapter 60. Members of the public attended said public hearing, and comment was received by the Department from the public regarding this proposed regulatory promulgation, which will be discussed in greater detail below. It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of the following documents: (1) a verbatim transcript; (2) three documents introduced by responsible Department staff at the public hearing held on February 26, 2015, and marked by this Hearing Officer accordingly as Department Exhibits 1-3; (3) Technical Response Memorandum (TRM) provided to this Hearing Officer by Bethany Fiske, Environmental Scientist with the Department's Division of Waste and Hazardous Substances, SHWMS, dated April 14, 2015; and (4) Supplemental TRM provided to this Hearing Officer by William Miller, III, Environmental Program Manager (SHWMS). The Department's persons primarily responsible for the drafting and overall promulgation of these proposed Amendments, Bethany Fiske, along with William Miller, III, developed the record with the relevant documents in the Department's files.

As stated previously, the purpose of this proposed regulatory promulgation is to adopt proposed Amendments to existing DRGSW to enable the Department to provide greater environmental protection and to reduce human health risks. The proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on February 26, 2015. Through the utilization of a highly detailed Power Point presentation, Department staff provided an exhaustive review of the proposed regulation amendments, addressing (1) the Department's reasoning for promulgation of these proposed Amendments; (2) the persons affected by these proposed Amendments; and (3) the particulars of the proposed Amendments, including a thorough discussion of all definitions and processes set forth therein. As noted above, members of the public attended the aforementioned February 26, 2015 hearing, however, no comment was

received by the Department with regard to this proposed regulatory promulgation at that time. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, during which time period additional public comment was, in fact, received by the Department. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

The hearing record formally closed with regard to public comment at close of business on Friday, March 13, 2015. At that time, the proposed Amendments were once again thoroughly reviewed by responsible Department staff, along with all comment that had been received. It should be noted that much of the comment received was from local businesses, asking specific questions as to how the proposed regulation amendments would directly affect their companies. It should also be noted that the SHWMS individually responded in detail to each comment received, to ensure that the Department was fully responsive to the specific needs of each commenter.

In many instances, the comment received questioned how the proposed regulatory changes relate to facilities affected by the Department's Beneficial Use Determination ("BUD") program. In those instances, Mr. Miller (BUD Program Manager) responded by explaining that a business' acceptance and reuse or recycling of a solid waste requires an Approval, or BUD, per DRGSW. Under the proposed regulatory amendments, facilities that currently have a BUD would need a Permit from the Department's Division of Waste and Hazardous Substances, SHWMS. Additionally, such facilities would also be subject to an annual permit fee and the standard public notice process.

For the most part, Mr. Miller's responses to the comments received as described above were sufficient, however, in the case of two commenters (David Allgor and Steve McCarron), additional discussions regarding this matter ensued, again, to ensure that all questions of these two members of the regulated community were satisfied. Accordingly, all comments (including the responses made to the same by the Department) have been formally incorporated into the hearing record generated in this matter, and can be found, specifically, in both the TRM of April 14, 2015 and the Supplemental TRM of August 25, 2015 (identified previously as Exhibits 3 and 4, respectively, as referenced above).

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed 7 DE Admin. Code 1301: *Delaware Regulations Governing Solid Waste*, as noted above. Accordingly, I recommend promulgation of these proposed regulatory Amendments in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 DE Admin. Code 1301, pursuant to 7 *Del. C.*, Chapter 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.*, Chapter 60, to issue an Order adopting these proposed regulatory Amendments as final;

3. The Department provided adequate public notice of the proposed regulatory Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory Amendments, including at the time of the public hearing held on February 26, 2015, and held the record open through close of business on March 13, 2015, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory Amendments before making any final decision;

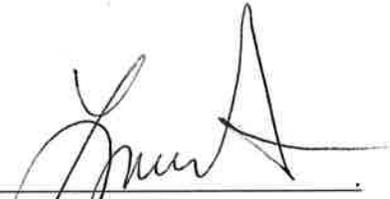
4. Promulgation of the proposed regulatory Amendments to 7 DE Admin. Code 1301: *Delaware Regulations Governing Solid Waste*, will enable the Department's SHWMS to (1) provide greater environmental protection and reduce human health risks; (2) increase enforceability and oversight available to the Department; (3) to ease the regulatory burden for small businesses generating only a small amount of infectious waste by modification of the existing infectious waste regulations with regard to allowing sharps to be transported without a transporter permit if certain conditions are met; and (4) provide greater consistency and fairness, as well as additional clarity (due to the correction of current clerical error) to the regulated community;

5. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

6. The Department's proposed regulatory Amendments, as published in the February 1, 2015 *Delaware Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with

the applicable laws and regulations. Consequently, they should be approved as final regulatory amendments, which shall go into effect twenty days after their publication in the next available issue of the *Delaware Register of Regulations*; and

7. The Department shall submit the proposed regulatory Amendments as final regulatory amendments to 7 DE Admin. Code 1301: *Delaware Regulations Governing Solid Waste*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



LISA A. VEST
Public Hearing Officer

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Attachments/Appendix:
Appendix A: Proposed Reg. Amendments

